

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HEATHER ATWELL, HEATHER ATWELL
as Trustee of ATWELL FAMILY TRUST,
HEATHER ATWELL as Administrator of the
Estate of David Atwell, and RESORT
PROPERTIES OF AMERICA, INC.,

Case No. 2:15-cv-02122-RFB-BNW

ORDER

Plaintiffs.

V.

WESTGATE RESORTS, INC., WESTGATE
RESORTS LTD, CENTRAL FLORIDA
INVESTMENTS, INC., WESTGATE LAS
VEGAS RESORT LLC,

Defendants.

1. INTRODUCTION

Before the Court are Plaintiffs' Motion for Judgment, ECF No. 144, and Defendants' Motion for Judgment, ECF No. 145, and Motion for New Trial, ECF No. 146.

II. PROCEDURAL BACKGROUND

Defendants removed this action to federal court on November 15, 2015. ECF No. 1. Plaintiffs filed the Amended Complaint which serves as the operative complaint in this action on November 18, 2016. ECF No. 49. Defendants filed a Motion for Summary Judgment on April 21, 2017. ECF No. 60. Plaintiffs filed a Motion for Partial Summary Judgment on the same day. ECF No. 64. A hearing on those motions was held on March 21, 2018. ECF No. 81. Both motions were denied. ECF No. 82. A jury trial was held on October 9-11, 2018 and October 15, 2018. ECF Nos. 127, 128, 131, 132. The jury returned a verdict for Plaintiffs Heather Atwell as Administrator of the Estate of David Atwell and Resort Properties of America, Inc. (RPA) against Defendants

1 Westgate Las Vegas Resort, LLC and Central Florida Investments, Inc. on both quantum meruit
2 and fraud claims. ECF No. 135. Both parties filed the instant respective Motions for Judgment on
3 November 5, 2018, and Defendants also filed the instant Motion for New Trial on that day. Both
4 parties responded on November 26, 2018. ECF Nos. 147-49. Both parties replied on December 10,
5 2018. ECF Nos. 150-51.

6 **III. FACTUAL BACKGROUND**

7 Plaintiffs Heather Atwell, Heather Atwell as Trustee of Atwell Family Trust, Heather
8 Atwell as Administrator of the Estate of David Atwell, and Resort Properties of America, Inc. filed
9 suit against Westgate Resorts Inc., Westgate Resorts LTD., Central Florida Investments, Inc., and
10 Westgate Las Vegas Resort, LLC on November 18, 2016. ECF No. 49. Plaintiffs alleged Westgate
11 contracted with Plaintiffs to provide real estate brokerage services in Clark County and that
12 Plaintiffs contacted owners of several properties, including the Las Vegas Hotel (LVH), but that
13 Plaintiffs were denied a commission for their efforts on the sale of the LVH. Id. at 5-10. Plaintiffs
14 further alleged that Defendants fraudulently misrepresented an interest in buying another property,
15 the Riviera, in an effort to turn Plaintiffs' attention away from the LVH sale, and that Plaintiffs
16 relied on that misrepresentation. Id. at 16-17.

17 At the close of arguments at trial, the Court dismissed all claims against all Defendants
18 except Central Florida Investments, Inc. and Westgate Las Vegas Resort, LLC. ECF No. 131.
19 Plaintiffs also stipulated to the dismissal of the claims of Heather Atwell, individually. Id. Thus,
20 the remaining Plaintiffs were Heather Atwell both as Administrator of the Estate of David Atwell
21 and as Trustee of the Atwell Family Trust, and RPA. The remaining two claims asserted against
22 Defendants Central Florida Investments, Inc. and Westgate Las Vegas Resort, LLC were quantum
23 meruit and fraud. Id. The jury found in favor of both Plaintiffs against both Defendants, and
24 awarded \$375,000 to each Plaintiff from each Defendant, for a total of \$1.5 million on the quantum
25 meruit claim. ECF No. 135. The jury also found in favor of both Plaintiffs against both Defendants
26 for the fraud claim, and awarded \$250,000 to each Plaintiff from each Defendant, for a total of \$1
27 million. Id.
28

1 **IV. LEGAL STANDARD**

2 **A. Rule 58**

3 Federal Rule of Civil Procedure 58 governs entry of judgment. Fed. R. Civ. P. 58. It states,
4 *inter alia*, that “[s]ubject to Rule 54(b) and unless the court orders otherwise, the clerk must,
5 without awaiting the court’s direction, promptly prepare, sign, and enter the judgment when: (A)
6 the jury returns a general verdict” Id. at 58(b). “A party may request that judgment be set out
7 in a separate document as required by Rule 58(a).” Id. at 58(d).

8

9 **B. Rules 50(b) and 59(a)**

10 Federal Rule of Civil Procedure 50(a) permits a party to move for judgment as a matter of
11 law “at any time before the case is submitted to the jury” “[i]f a party has been fully heard on an
12 issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient
13 evidentiary basis to find for the party on that issue.” Rule 50(b) allows a party to renew that motion
14 if not granted “no later than 28 days after the entry of judgment” and include “an alternative or
15 joint request for a new trial under Rule 59 In ruling on the renewed motion, the court may:
16 (1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct
17 the entry of judgment as a matter of law.”

18 Pursuant to Federal Rule of Civil Procedure 59(a), a new trial may be granted in an action
19 in which there has been a trial by jury “for any reason for which a new trial has heretofore been
20 granted in an action at law in federal court.” “The grant of a new trial is ‘confided almost entirely
21 to the exercise of discretion on the part of the trial court.’” Murphy v. City of Long Beach, 914
22 F.2d 183, 186 (9th Cir. 1990) (quoting Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 36
23 (1980)).

24 Because “Rule 59 does not specify the grounds on which a motion for a new trial may be
25 granted [courts] are thus bound by those grounds that have been historically recognized.”
26 Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1035 (9th Cir. 2003). Such historical grounds
27 include claims “that the verdict is against the weight of the evidence, that the damages are
28 excessive, or that, for other reasons, the trial was not fair to the party moving[.]” Montgomery

1 Ward & Co. v. Duncan, 311 U.S. 243, 251 (1940); see also Passantino v. Johnson & Johnson
2 Consumer Prods., 212 F.3d 493, 510 n.15 (9th Cir. 2000). “[E]rroneous jury instructions, as well
3 as the failure to give adequate instructions, are also bases for a new trial.” Murphy, 914 F.2d at
4 187.

5 The trial court “is not limited to the grounds a party asserts to justify a new trial, but may
6 sua sponte raise its own concerns about the . . . verdict. Ultimately, the district court can grant a
7 new trial under Rule 59 on any ground necessary to prevent a miscarriage of justice.” Experience
8 Hendrix L.L.C. v. Hendrixlicensing.com Ltd., 762 F.3d 829, 842 (9th Cir. 2014) (citations
9 omitted).

10

11 C. Remittitur

12 “If the amount of damages awarded [by a jury] is excessive, it is the duty of the trial judge
13 to require a remittitur or a new trial.” Linn v. United Plant Guard Workers, 383 U.S. 53, 65–66
14 (1966). “A remittitur must reflect the maximum amount sustainable by the proof.” Oracle Corp. v.
15 SAP AG, 765 F.3d 1081, 1094 (9th Cir. 2014) (quotation omitted).

16 “When the court, after viewing the evidence concerning damages in a light most favorable
17 to the prevailing party, determines that the damages award is excessive, it has two alternatives. It
18 may grant defendant’s motion for a new trial or deny the motion conditional upon the prevailing
19 party accepting a remittitur. The prevailing party is given the option of either submitting to a new
20 trial or of accepting a reduced amount of damage which the court considers justified. If the
21 prevailing party does not consent to the reduced amount, a new trial must be granted. If the
22 prevailing party accepts the remittitur, judgment must be entered in the lesser amount.” Fenner v.
23 Dependable Trucking Co., 716 F.2d 598, 603 (9th Cir. 1983).

24

25 V. DISCUSSION

26 A. Defendants’ Motions for Judgment and New Trial. ECF Nos. 145, 146

27 Defendants move for renewed judgment as a matter of law or alternatively for a new trial
28 pursuant to Rules 50(b) and 59; or, in the alternative, seek remittitur. The Court first considers

1 Defendants' renewed judgment as a matter of law.

2 *i. Renewed Motion for Judgment as a Matter of Law*

3 Defendants argue that they are entitled to judgment as a matter of law, or in the alternative,
4 a new trial because Plaintiffs offered no or insufficient evidence to support either of their claims
5 for quantum meruit or fraud, and therefore that no reasonable jury could find for Plaintiffs on those
6 claims. Specifically, Defendants argue:

- 7 1) Plaintiffs offered no evidence that David Atwell was the procuring cause of the
8 purchase of the LVH or that Plaintiffs otherwise satisfied the necessary prerequisites
9 to claim a real estate commission under Nevada law. Mot. for J. at 15, ECF No. 145.
- 10 2) No reasonable jury could find the existence of an employment agreement for the LVH
11 between Atwell or Plaintiffs and Westgate. Id. at 17-18.
- 12 3) Unrefuted evidence established that Atwell and Plaintiffs abandoned their claim for a
13 commission for sale of the LVH. Id. at 18-20.
- 14 4) The weight of the evidence does not support a verdict for quantum meruit because
15 Plaintiffs did not offer evidence to support damages under that claim, and Plaintiffs
16 were not entitled to receive a commission because RPA was not licensed as a broker in
17 accordance with Nevada law. Id. at 20-22.
- 18 5) Plaintiffs did not meet their burden of establishing fraud by clear and convincing
19 evidence. Id. at 22-24.

20 Defendants further argue that they were unfairly prejudiced when this court limited cross
21 examination of Heather Atwell on the issue of whether RPA was licensed as a broker, id. at 24-
22 25, that Plaintiff's claims should have been barred due to their failure to comply with statutory
23 provisions applicable to the sale of a business in Nevada, id. at 26-8, and that the Court erred in
24 denying Defendants the opportunity to present a novation defense, id. at 28-9.

25 Plaintiffs counter that many of Defendants' arguments are untimely. Opp'n to Defs.' Mot.
26 for J. at 7, ECF No. 147. Specifically, they assert that Defendants did not argue at the time of their
27 initial motion for judgment as a matter of law at the conclusion of Plaintiffs' case that: 1) the
28 quantum meruit damages are improper because RPA is not a licensed estate or business broker; 2)

1 Defendants were prejudiced in being prohibited from cross-examining Heather Atwell on the
2 licensing status; 3) Plaintiffs are prohibited from recovery because they did not comply with the
3 law governing licensure of business brokers; and 4) that the Court erred in instructing the jury on
4 the novation defense. Id. at 7-9. Accordingly, Plaintiffs assert that Defendants have waived these
5 arguments for consideration. Id. at 9. Plaintiffs further argue that even if these arguments are
6 timely, and with regard to those arguments that were not waived, substantial evidence supports the
7 jury's finding on the quantum meruit and fraud claims.

8 The applicable test to determine whether judgment as a matter of law is warranted is
9 “whether ‘the evidence, construed in the light most favorable to the nonmoving party, permits only
10 one reasonable conclusion, and that conclusion is contrary to that of the jury.’” Estate of Diaz v.
11 City of Anaheim, 840 F.3d 592, 604 (9th Cir. 2016) (quoting White v. Ford Motor Co., 312 F.3d
12 998, 1010 (9th Cir. 2002) amended on denial of reh’g, 335 F.3d 833 (9th Cir. 2003) (footnote
13 omitted)). “[I]n entertaining a motion for judgment as a matter of law, the court should review all
14 of the evidence in the record. In doing so, however, the court must draw all reasonable inferences
15 in favor of the nonmoving party, and it may not make credibility determinations or weigh the
16 evidence. Credibility determinations, the weighing of the evidence, and the drawing of legitimate
17 inferences from the facts are jury functions, not those of a judge. Thus, although the court should
18 review the record as a whole, it must disregard all evidence favorable to the moving party that the
19 jury is not required to believe. That is, the court should give credence to the evidence favoring the
20 nonmovant as well as that evidence supporting the moving party that is uncontradicted and
21 unimpeached, at least to the extent that that evidence comes from disinterested witnesses.” Reeves
22 v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 150–51 (2000) (internal citations and quotations
23 omitted).

24 The Court finds that Defendants have waived the arguments identified by Plaintiffs *supra*.
25 “[A] ‘party cannot raise arguments in its post-trial motion for judgment as a matter of law under
26 Rule 50(b) that it did not raise in its pre-verdict Rule 50(a) motion.’” OTR Wheel Eng’g, Inc. v.
27 W. Worldwide Servs., Inc., 897 F.3d 1008, 1016 (9th Cir. 2018) (quoting Freund v. Nycomed
28 Amersham, 347 F.3d 752, 761 (9th Cir. 2003)). A review of the transcript of that hearing makes

1 plain that Defendants did not make the arguments regarding licensure, cross examination, and the
2 novation defense. See Tr. of Proceedings, 131 Jury Trial at 44-79, ECF No. 140. Thus, the Court
3 finds they have been waived.

4 Yet even if Defendants had not waived these arguments, and in consideration of their
5 remaining arguments, the Court finds that, taking the evidence in the light most favorable to
6 Plaintiffs, the jury had a legally sufficient evidentiary basis to find for Plaintiffs.

7 Taking each of Defendants' arguments in turn, the Court first finds that there was a legally
8 sufficient evidentiary basis for the jury to conclude that Plaintiffs had established a quantum meruit
9 claim. In the absence of an express contract, a party may be able to recover under the theory of
10 quantum meruit, which is a claim that arises either in contract or for restitution for unjust
11 enrichment. Certified Fire Prot. Inc. v. Precision Constr., 283 P.3d 250, 256 (Nev. 2012). A
12 contractual quantum meruit claim may arise if there exists an implied-in-fact contract. Id. “A
13 contract implied-in-fact must be ‘manifested by conduct,’ [and] . . . ‘a true contract that arises
14 from the tacit agreement of the parties.’” Id. (citations omitted). “Where unjust enrichment is
15 found, the law implies a quasi-contract, which requires the defendant to pay to plaintiff the value
16 of the benefit conferred. In other words, the defendants make restitution to the plaintiff in quantum
17 meruit.” Id. at 257 (citations omitted) (quotation marks omitted). In a claim for collection of a
18 broker’s commission, a plaintiff may recovery under quantum meruit if it can be proven that “(1)
19 an employment contract existed, and (2) the broker was the procuring cause of the sale.” Atwell
20 v. Southwest Secs., 820 P.2d 766, 768 (Nev. 1991).

21 Defendants argue Plaintiffs presented no evidence that David Atwell was the procuring
22 cause of the purchase of LVH and that no reasonable jury could find that an employment agreement
23 existed. Yet as Plaintiffs note, there is sufficient evidence in the record to support the jury’s finding
24 that Plaintiffs met their burden. The record illustrates that Plaintiffs introduced themselves as
25 Defendants’ broker to Goldman Sachs to gauge interest, that at that time Goldman Sachs was
26 considering a potential sale of LVH, and that Plaintiffs first introduced this interest. ECF No. 147
27 at 15. Furthermore, Defendants misstate the law as it pertains to Plaintiff’s burden under a theory
28 of quantum meruit with regard to the requirements of an employee agreement. The agreement may

1 be implied in fact, Atwell v. Westgate Resorts, Inc., No. 215CV02122RFBPAL, 2018 WL
2 1610874, at *5 (D. Nev. Mar. 31, 2018), and Plaintiffs were not obligated to establish evidence of
3 an explicit “offer, acceptance, and meeting of the mind to support existence of an employment
4 agreement,” ECF No. 145 at 17. As such, they were not therefore required to provide evidence of
5 a written agreement. Id. The evidence they *did* provide, in the form of David Siegel’s testimony
6 that he, *inter alia*, told David Atwell to “find [him] something in Vegas,” was enough for the jury
7 to conclude there was an implied employment agreement. ECF No. 147 at 12. Furthermore,
8 Plaintiffs correctly note that the jury was entitled to consider competing evidence to conclude that
9 Plaintiffs were “precluded from consummating the sale,” ECF No. 147 at 16, based on
10 misrepresentations, rather than that they “abandoned” their efforts,” ECF No. 145 at 18-20.
11 Finally, Plaintiffs’ evidence regarding quantum meruit damages was sufficient for the jury to
12 reasonably determine the reasonable value of the services Plaintiffs provided. Plaintiffs put
13 forward testimony that their customary fees are 1% of the purchase price of a given property, id.
14 at 13, and this testimony was bolstered by evidence that Defendants agreed to pay Plaintiffs a 1%
15 commission on the sale of the Riviera, id.

16 Similarly, the Court finds that a reasonable jury would have a legally sufficient evidentiary
17 basis to find for Plaintiffs on the fraud claim. To prevail on a claim for fraud, a plaintiff must prove
18 each of the following elements by clear and convincing evidence: “1) A false representation made
19 by the defendant; 2) Defendant’s knowledge or belief that the representation is false (or
20 insufficient basis for making the representation); 3) Defendant’s intention to induce the plaintiff
21 to act or to refrain from acting in reliance upon the misrepresentation; 4) Plaintiff’s justifiable
22 reliance upon the misrepresentation; and 5) Damage to the plaintiff resulting from such reliance.”
23 Bulbman, Inc. v. Nev. Bell, 825 P.2d 588, 592 (Nev. 1992). “It is the jury’s role to make findings
24 on the factors necessary to establish a fraud claim. Franchise Tax Bd. of Cal. v. Hyatt, 335 P.3d
25 125, 144 (2014), vacated and remanded sub nom. Franchise Tax Bd. of California v. Hyatt, 136 S.
26 Ct. 1277 (2016) (citing Powers v. United Servs. Auto. Ass’n, 962 P.2d 596, 600–01 (1998)). Courts
27 “will generally not disturb a jury’s verdict that is supported by substantial evidence.” Id. (citing
28 Taylor v. Thunder, 13 P.3d 43, 46 (2000)). “Substantial evidence is defined as ‘evidence that a

1 reasonable mind might accept as adequate to support a conclusion.”” *Id.* (citing Winchell v. Schiff,
2 193 P.3d 946, 950 (2008) (internal quotations omitted)).

3 Plaintiffs point to evidence in the record illustrating that Defendants’ interest in purchasing
4 the Riviera when they could not afford to purchase it, representing an interest in engaging
5 Plaintiffs’ Chinese clients in a joint venture on LVH, and Mr. Siegel’s representation that he would
6 ask Mr. Shetty to share the commission, all permitted the jury to conclude that a false
7 representation existed. ECF No. 18. Further, Plaintiffs highlight evidence that though Mr. Siegel
8 would ordinarily speak to his Chief Financial Officer before making a \$75 million offer (on the
9 Riviera), the Chief Financial Officer had no knowledge of such an offer. *Id.* Plaintiffs also point
10 to evidence that Defendants could not have purchased both the Riviera and LVH simultaneously
11 and that Shetty was not asked to split the commission to demonstrate that there was sufficient
12 evidence that Defendants had an insufficient basis for making these representations. *Id.* at 18-9.
13 Plaintiffs also point to evidence that when Plaintiffs pressured Defendants about the LVH dispute,
14 Defendants directed their attention to the Riviera, and that Defendants were in contact on the LVH
15 at this time. *Id.* at 19. Plaintiffs assert this evidence was sufficient to reasonably conclude
16 Defendants had intent. With regard to reliance, Plaintiffs highlight evidence in the form of Heather
17 Atwell’s testimony that she opted not to pursue a written objection with the seller to preclude the
18 closing on the LVH in light of Defendants’ assurance they would “make it right.” *Id.* Finally,
19 Plaintiffs point to Heather Atwell’s testimony as to “lost customers and opportunities, the mental
20 and physical efforts Plaintiffs put into the property Defendants never intended to purchase (that
21 could have been put towards serving another client), and the emotional impact” of the fraud on her
22 father. *Id.* at 19-20.

23 To the extent Defendants offer evidence that contradicts the evidence provided by Plaintiffs
24 on the quantum meruit and fraud claims, the Court disregards it as “evidence favorable to the
25 moving party that the jury is not required to believe.” Under the standard established by the
26 Supreme Court in Reeves v. Sanderson Plumbing Products Inc. for a renewed motion for judgment
27 as a matter of law, the Court simply does not weigh the evidence. Plaintiffs have pointed to
28 evidence in the record that a reasonable mind might accept as adequate to support the conclusion

1 that Defendants committed fraud. In other words, the jury's finding is supported by substantial
2 evidence, and Defendants have consequently failed to meet their burden under Rule 50(b).
3 Accordingly, Defendants' renewed motion for judgment as a matter of law or alternatively for a
4 new trial pursuant to Rules 50(b) and 59 is denied.

5

6 *ii. Remittitur*

7 Defendants next argue in the alternative that they are entitled to a remittitur or a new trial
8 because the jury's verdict was excessive and provided Plaintiffs with an impermissible double
9 recovery.

10 The Nevada Supreme Court has stated that "in actions for damages in which the law has
11 provided no legal rule of measurement, it is the jury's responsibility to determine the amount to be
12 allowed. A court is not justified in granting a new trial on the grounds of excessive damages unless
13 the verdict is so flagrantly improper as to indicate passion, prejudice or corruption in the jury. The
14 court may not invade the province of the jury by arbitrarily substituting what the court feels is a
15 more suitable sum. The mere fact that a verdict is large is not itself indicative of passion and
16 prejudice. Hazelwood v. Harrah's, 862 P.2d 1189, 1192 (Nev. 1993), overruled on other grounds
17 by Vinci v. Las Vegas Sands, Inc., 984 P.2d 750 (1999) (internal quotations omitted) (citations
18 omitted).

19 Defendants argue that the verdict form impermissibly permitted both RPA and the Estate
20 to receive a double recovery, resulting in an excessive damage award. Defendants assert that the
21 jury's award grants both RPA and the Estate damages under "alternative legal theories against
22 both CFI and Westgate LVR." ECF No. 145 at 7. Instead, they argue Plaintiffs were only entitled
23 to "one damage award, if liability is found, on any or all of the theories asserted against one
24 Defendant. A plaintiff may not recover for the same harm arising from the same facts under
25 multiple alternative theories." Id. Defendants assert Plaintiffs can't recover over the \$1.5 million
26 commission because they allege that Plaintiffs have suffered "one and only one alleged harm: the
27 loss of the portion of the commission that Plaintiffs claim should have been shared on the sale of
28 the LVH." Id. at 8. Specifically, Defendants argue that the damages sought for both the quantum

1 meruit and fraud claims are for the same harm. Id. at 9.

2 Defendants further argue that there was no evidentiary basis for the verdict's "arbitrary
3 apportionment of damages" under the quantum merit claim because Plaintiffs did not prove that
4 "their services were valuable to the Defendants or prove a reasonably certain way to calculate the
5 value of such services." Id. at 14. Defendants also argue that Plaintiffs are bound by the arguments
6 of counsel during opening statements and closing arguments, as well as through emails entered
7 into evidence, that Plaintiffs were only seeking an award for a portion of the commission, and
8 therefore Plaintiffs have no right to damages greater than the potential amount of the commission.
9 Id. at 9-12.

10 Finally, Defendants argue the verdict form was confusing and therefore contributed to the
11 excessive award, because it listed multiple plaintiffs and defendants subject to the same claims, id.
12 at 12, and that the Court erred for failing to provide the jury an instruction as to joint and several
13 liability or apportionment of damages, id. Defendants therefore assert that the Court must order a
14 remittitur reducing Plaintiff's total recovery to \$375,000 or order a new trial. Id. at 15.

15 Plaintiffs counter Defendants' argument that the quantum meruit and fraud claims were
16 premised on the same wrongful conduct and legal duties because the claims have different material
17 elements and arise from different legal duties. ECF No. 148 at 7-10. Plaintiffs assert that the
18 quantum meruit claim went to compensation for the value of services rendered in connection with
19 the purchase of LVH, but the fraud claim related to "being diverted from focusing on the LVH to
20 the Riviera, when Defendants had no real interest in the latter." Id. at 9. As such, the claims involve
21 "distinct sets of wrongful conduct by Defendants." Id. Plaintiffs therefore argue that this distinction
22 informed the jury's verdict, which awarded damages for "distinct injuries." Because "fraud
23 damages can encompass both economic and non-economic harms Plaintiffs' economic
24 damages on their fraud claims could extend to other items beyond the value of their services that
25 have support in the record." Id. at 10-11. Thus, the "physical efforts" Plaintiffs put into procuring
26 the Riviera that could have been put toward other clients, the loss of a client as a result of
27 Defendants' conduct, and the emotional impact of the fraud are all fraud damages not otherwise
28 recoverable under a theory of quantum meruit. Id. at 10-12.

1 Plaintiffs further argue that Counsel's statements regarding the damage sought do not
2 qualify as "binding admissions" and in any event were a "minimum request." Id. at 13-14. Finally,
3 Plaintiffs argue that Defendants waived any objections to the verdict form for failing to object to
4 the form during trial, id. at 14-17, and that even if there was no waiver, the form did not contribute
5 to an excessive damages award, id. at 17-19.

6 The Court finds that the damages awarded were not "so flagrantly improper as to indicate
7 passion, prejudice or corruption in the jury." With regard to the quantum meruit claim, the jury
8 awarded Plaintiffs the full value of the commission. See ECF No. 135 at 1-2. The total value of
9 the award to both Plaintiffs from both Defendants was \$1.5 million—the same value that Plaintiffs
10 argued at trial was 1% of the sale price of LVH, or, in other words, the value of the commission.
11 Indeed, the evidence adduced at the trial indicated that this approximate amount had been paid to
12 another broker. The jury was entitled to find that the reasonable value of Plaintiffs' services was
13 the full value of the commission, and the award reflects that sum.

14 With regard to the fraud claim, Defendants have failed to appreciate that damages for fraud
15 are broader than merely the value of the commission, as damages resulting from reliance on a
16 misrepresentation may encompass more than the reasonable value of the services rendered, if the
17 harm itself extended beyond the benefits lost under the quasi-contract. See, e.g., Albert H. Wohlers
18 & Co. v. Bartgis, 969 P.2d 949, 958 (Nev. 1998) (upholding damages award for noneconomic
19 compensatory damages). As discussed *supra*, there was substantial evidence for the jury to find
20 for Plaintiffs on the fraud claim, and the \$1 million award may account for the economic and non-
21 economic damages Plaintiffs suffered. The jury heard evidence that the Defendants had
22 intentionally misdirected Plaintiffs to pursue a purchase which was never intended to be
23 consummated by the Defendants and that the Plaintiffs had expended human capital and
24 reputational resources to pursue this false trail. They further heard evidence that Mr. Atwell was
25 gravely ill and that Defendants' actions and failure to pay essentially took advantage of his inability
26 to advocate for his own interests due to his illness. The jury found for the Plaintiff's on the fraud
27 claim so they clearly found that the Defendants had engaged in the conduct alleged by the
28 Defendants and considered the evidence of these noneconomic damages unrelated to the specific

1 commission amount.

2 The jury is entitled to render a value based on the damages suffered by Plaintiffs. The Court
3 cannot and will not substitute its own judgment. The Court does not find that the damages awarded
4 were “so flagrantly improper as to indicate passion, prejudice or corruption in the jury,” and as
5 such, does not find they were excessive. The Court does not therefore consider the parties’ other
6 arguments and denies the motion for remittitur.

7 Additionally, the Court finds that Defendants waived any right to challenge the verdict
8 form in this case. When presented with the Court’s verdict form, the Defendants did not object to
9 the form. Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1109–10 (9th Cir. 2001).
10 By waiting until post-trial briefing, Defendants waived any challenge to the verdict form. Id.

11

12 VI. CONCLUSION

13 For the reasons stated above,

14 **IT IS THEREFORE ORDERED** that Defendants’ Motions for Judgment and a New
15 Trial (ECF Nos. 145, 146) are **DENIED**.

16 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion for Judgment (ECF No. 144) is
17 **GRANTED**.

18 The Clerk of Court is instructed to close this case.

19

20 DATED: September 28, 2019.



21
22 RICHARD F. BOULWARE, II
23 UNITED STATES DISTRICT JUDGE
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